

46 Am. Jur. 2d Judges § 143

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Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

c. Judge's Actions or Rulings as Grounds for Disqualification

§ 143. Comments made by judge during proceedings as grounds for disqualification; public statements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#) 49(1), 49(2)

A.L.R. Library

[Prejudicial effect of trial judge's remarks, during civil jury trial, disparaging litigants, witnesses, or subject matter of litigation
—modern cases, 35 A.L.R.5th 1](#)

Trial Strategy

[Disqualification of Trial Judge for Cause, 50 Am. Jur. Proof of Facts 3d 449](#)

Forms

Forms relating to disqualification of judge due to bias or prejudice, generally, see Am. Jur. Pleading and Practice Forms, Judges [\[Westlaw®\(r\) Search Query\]](#)

So long as a judge remains open-minded enough to refrain from finally deciding a case until all the evidence has been presented, comments made by the judge during the course of the proceedings generally will not be considered as indicative of disqualifying bias or prejudice.¹ Absent quite unusual circumstances, a judge cannot be recused for views formed on the basis of what he or she has learned in court.² Judicial remarks made during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases ordinarily do not support a bias or partiality challenge.³ What a judge learns in his or her judicial capacity is a proper basis for judicial observations and the use of such information should not result in disqualification.⁴

On the other hand, when a judge's remarks are so extreme that they show that his or her decision has been predetermined, improper bias or prejudice will be found to exist.⁵ A judge's remarks made in the context of a court proceeding may be indicative of prejudice or improper bias if they demonstrate that the judge has closed his or her mind to the presentation of all the evidence.⁶ To warrant recusal, a judge's opinions or comments must demonstrate such a high degree of favoritism or antagonism as to make a fair judgment impossible.⁷

Observation:

Pursuant to the Code of Judicial Conduct, a judge must disqualify him- or herself in any proceeding in which the judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.⁸

CUMULATIVE SUPPLEMENT

Cases:

Issue in determining whether trial judge prejudged case, as would warrant disqualification, is whether comments conveying impressions, in context, could reasonably be interpreted to mean that the judge had crossed that line from forming mental impressions to prejudging the issue. [1440 Plaza, LLC v. New Gala Building, LLC](#), 314 So. 3d 555 (Fla. 3d DCA 2020).

Judge's consideration of defendant's musical preferences in determining defendant's credibility as to whether he told his attorney he wanted to appeal his life sentence, as would support his motion for out-of-time appeal, was inappropriate negative stereotyping, prohibited by canons of judicial conduct prohibiting judicial bias or prejudice. Sup.Ct.Rules, Rule 601B, Code of Jud.Conduct, Canon 2, Rule 2.3(B). [State v. Smith](#), 423 P.3d 530 (Kan. 2018).

A judge's comments that constitute a valid observation based on the history of the case rather than prejudgment on the merits of the underlying charges do not amount to actual bias, as would support disqualifying the judge from presiding at trial. [Minn. R. Crim. P. 26.03\(14\)\(3\)](#). [State v. Malone](#), 963 N.W.2d 453 (Minn. 2021).

Bias of Family Court Judge unjustly affected result of proceeding to father's detriment, in proceeding arising from father's alleged willful violation of spousal maintenance and child support obligations which resulted in period of incarceration, where record reflected that Judge took an adversarial stance towards father and made numerous improper remarks to him, including that father symbolized everything that was "wrong with the world today," Judge made the matter personal by comparing father's experiences to Judge's own, and Judge committed father to four times the period of incarceration recommended by Support Magistrate. [Berg v. Berg](#), 166 A.D.3d 763, 88 N.Y.S.3d 248 (2d Dep't 2018).

Trial court's comments in prosecution for first-degree murder, conspiracy, and weapons offenses, referring to defendant in ruling on motion to suppress confession as "lip-reader" and "Houdini," that one portion of defendant's testimony was "incomprehensible," that another portion was "flat out prevarication," and that portion of his testimony regarding recording of his confession was "outrageous and blatant lie," together with comments on motion for new trial that defendant had made statements that were "beyond belief," did not warrant judge's recusal from hearing application for postconviction relief, where trial court was charged with making determinations on credibility of witnesses on both motions, and comments were made solely within context of motions. [Barros v. State](#), 180 A.3d 823 (R.I. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Madsen v. Prudential Federal Sav. and Loan Ass'n](#), 767 P.2d 538 (Utah 1988).
- 2 [Obert v. Republic Western Ins. Co.](#), 398 F.3d 138 (1st Cir. 2005).
As to the requirement that bias be extrajudicial, see § 127.
- 3 [U.S. v. Carlton](#), 534 F.3d 97 (2d Cir. 2008); [In re Community Bank of Northern Virginia](#), 418 F.3d 277 (3d Cir. 2005); [O'Neill v. O'Neill](#), 2016 SD 15, 876 N.W.2d 486 (S.D. 2016).
A judge's mere expressions of impatience, dissatisfaction, annoyance and even anger, that are within the bounds of what imperfect men and women sometimes display, do not establish bias. [Sherrill v. Sherrill](#), 373 P.3d 486 (Alaska 2016).
Unfavorable comments regarding the credibility of a party are not sufficient to overcome the presumption against judicial bias. [In re Marriage of Troske](#), 389 Ill. Dec. 594, 27 N.E.3d 86 (App. Ct. 5th Dist. 2015).
Mere criticism of a party or his or her attorney does not indicate prejudice. [In re Antonio](#), 612 A.2d 650 (R.I. 1992).
- 4 [People v. McCarty](#), 851 P.2d 181 (Colo. App. 1992), judgment aff'd, 874 P.2d 394 (Colo. 1994).
- 5 [Burgess v. State](#), 89 Md. App. 522, 598 A.2d 830 (1991); [Middleton v. Evers](#), 515 So. 2d 940 (Miss. 1987).
A comment by the judge assigned to preside over the defendant's retrial on a charge for capital murder, that he had virtually no confidence in the State's evidence, warranted the reassignment of the case to a new judge. [State v. Wright](#), 131 A.3d 310 (Del. 2016).
- 6 [State v. Eighth Jud. Dist. Ct. \(Schneider\)](#), 376 P.3d 798, 132 Nev. Adv. Op. No. 59 (Nev. 2016).
- 7 [U.S. v. Carlton](#), 534 F.3d 97 (2d Cir. 2008); [Sherrill v. Sherrill](#), 373 P.3d 486 (Alaska 2016).
- 8 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(5).

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